In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 590

ROBERT JAYSON, WILLIAM K. JAYSON and JENNIE JAYSON, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In 1958, the United States instituted condemnation proceedings to acquire a parcel of land containing a five-story building owned by petitioners in Dallas, Texas. This parcel, along with others adjacent to the existing post office building, was being acquired for the erection of a federal office building (now under construction). Petitioners challenged the validity of the taking because the General Services Administration had accepted an offer by a syndicate of individ-

uals interested in having the federal building located on this site to indemnify the government if the cost of this and the adjacent properties exceeded a certain amount. Petitioners moved to join the members of the syndicate in the proceeding and sought oral depositions and interrogatories pertaining to the selection of the site. The government moved for judgment on the pleadings as to the right to condemn the property, asserting that no legally sufficient defense had been raised. The district court granted that motion and denied petitioners' motions. The court ruled that Congress had given the Administrator of the General Services Administration the power to negotiate for the purchase of property and to select property for condemnation and that his action in that regard was not subject to review by the courts (Pet. App. A5-A6).

Following a trial of the issue of just compensation, final judgment in condemnation was entered on May 23, 1960. A motion for new trial raising, among others, the issue of indemnification was denied. *United States* v. *Certain Land in the City and County of Dallas, Texas*, Civil No. 8072, N.D. Tex. On appeal by petitioners, the Fifth Circuit affirmed the trial court's rulings. *Jayson* v. *United States*, 294 F.2d 808. No review by this Court was sought. Upon remand, petitioners filed a motion to set aside the judgment under Rule 60(b), F.R.Civ.P., again alleging the existence of the indemnification agreement. The district court found that there had been no fraud, misrepresentation or other misconduct on the part of the United States or its representatives, that no new-

ly discovered evidence had been presented, and that "[a]ll issues presented by this motion were made, adjudged and fairly open for adjudgment in the prior litigation" and denied the motion. No appeal was taken.

Thereafter, petitioners filed an action in the United States District Court for the District of Columbia to enjoin the Administrator of the General Services Administration from proceeding with the project. *Jayson* v. *Knott*, Civil No. 1751-65. Petitioners again referred to the indemnification agreement and charged the government officers with conspiracy in connection with the condemnation. The dismissal of that action was affirmed *per curiam* by the United States Court of Appeals for the District of Columbia Circuit on April 28, 1966, on the ground of *res judicata*. *Jayson* v. *Knott*, No. 19,768.

On September 19, 1966, petitioners instituted this action in the Court of Claims seeking $370,000, which they asserted was the difference between the condemnation award of $380,000 and the value of the property. They again recited the government's acceptance of the syndicate's offer of indemnification and charged collusion and lack of due process. The Court of Claims granted the government's motion for summary judgment on the ground that the petitioners' claim is barred by the doctrine of *res judicata* (App. D1). Motion for reconsideration was denied (App. E1).

The decision of the court below that petitioners' suit was barred by *res judicata* is clearly correct. Petitioners presented their claim of impropriety in

the indemnification agreement during the course of the condemnation proceedings. When the district court and the court of appeals ruled adversely to petitioners in that action, they could have sought certiorari in this Court. As it was, the judgment became final. Petitioners were, therefore, barred from relitigating that issue in a new action. *Jackson* v. *Irving Trust Co.*, 311 U.S. 494, 503.[1]

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

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[1] It should also be noted that there was no impropriety in the indemnification agreement to which petitioners refer. The government clearly had the right to condemn property for a needed federal building. The fact that the government was able to obtain a guarantee as to cost from local businessmen who believed they would be benefited by having the federal building located in a certain area did not defeat the government's right to exercise its power of condemnation. Cf. *Berman* v. *Parker*, 348 U.S. 26; *United States ex rel. T.V.A.* v. *Welch*, 327 U.S. 546, 554.

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